

REMARKS

Claims 1, 9, and 17 are amended. Claims 1-22 are pending.

The amendments to the claims are based on the application as originally filed, so it is respectfully submitted that no new matter has been added.

In the office action, claims 1-3, 9-11, 17-18, and 21-22 were rejected under 35 U.S.C. § 103(a) in view of U.S. Patent Number 5,339,543 to Lin and U.S. Patent Number 5,664,342 to Buchsenschuss; claims 5, 13, and 20 were rejected under 35 U.S.C. § 103(a) in view of Lin, Buchsenschuss, and U.S. Patent Number 2,759,284 to Santisi; claims 6 and 14 were rejected under 35 U.S.C. § 103(a) in view of Lin, Buchsenschuss, and U.S. Design Patent Number D217,217 to Evins; claims 7 and 15 were rejected under 35 U.S.C. § 103(a) in view of Lin, Buchsenschuss, and U.S. Patent Number 2,470,200 to Wallach; claims 8 and 16 were rejected under 35 U.S.C. § 103(a) in view of Lin, Buchsenschuss, and U.S. Patent Number 4,697,362 to Wasserman; and claims 4, 12, and 19 were rejected under 35 U.S.C. § 103(a) in view of Lin, Buchsenschuss, and Official Notice.

Independent claim 1 is amended to recite an article of footwear comprising:

a sole having a front portion and a rear portion;

an insole having a front portion and a rear portion, with the front portion of the insole connected to the front portion of the sole, and with the rear portion of the insole spaced apart from the rear portion of the sole and forming a space therebetween;

a heel connected directly to and positioned between rear portions of the insole and the sole, the heel having a height greater than the thickness of the insole, with the heel being composed of a substantially solid material throughout which substantially fills the entire space

between the rear portions of the insole and the sole rearward of a junction of the front portions of the insole and the sole; and

a cushion positioned on the rear portion of the insole above the heel.

Independent claim 9 is amended to recite an article of footwear comprising:

a sole having a front portion and a rear portion;

a heel positioned over the rear portion of the sole, with the heel composed of a substantially solid material;

an insole having a front portion and a rear portion, with the rear portion connected directly to and positioned upon the heel with the heel substantially filling a space formed between the rear portions of the insole and the sole rearward of a junction of the front portions of insole and the sole, and with the front portion of the insole connected directly to and positioned upon the front portion of the sole; and

a cushion positioned on the rear portion of the insole above only the heel;

wherein the heel has a height greater than the thickness of the insole.

Independent claim 17 is amended to recite an article of footwear comprising:

a sole having a front portion and a rear portion;

a heel positioned over the rear portion of the sole, with the heel composed of a solid material;

an insole having a front portion and a rear portion, with the rear portion of the insole connected directly to and positioned upon the heel and with the front portion of the insole positioned upon the front portion of the sole, with the heel filling a space formed between the rear portions of the insole and the sole rearward of a junction of the front portions of the insole and the sole;

a cushion positioned on the rear portion of the insole above only the heel; and  
a strap, attached to the insole, for removably securing at least the insole to the foot  
of a wearer;

wherein the heel has a height greater than the thickness of the insole.

Independent claims 1, 9, and 17, as amended, are patentable over the cited art, since the cited art does not disclose or suggest, individually or in combination, at least a rear portion of the insole spaced apart from the rear portion of the sole and forming a space therebetween, with a heel positioned between the rear portions of the insole and the sole, with the heel being composed of a substantially solid material which substantially fills the entire space between the rear portions of the insole and the sole rearward of a junction of the front portions of the insole and the sole.

Lin has an insole 1 connected to and positioned upon both a heel 4 and an outer sole 3, as shown in FIG. 1 of Lin. However, in Lin, there is no space between the rear portions of the insole 4 and the sole 3, and the heel 4 does not substantially fill any such space, as in the claimed invention.

Similarly, Buchsenschuss has an insole 1 connected to and positioned upon a combination heel and sole, as shown in FIG. 1 of Buchsenschuss. However, in Buchsenschuss, there is no space between the rear portions of the insole 1 and the sole, and the heel does not substantially fill any such space, as in the claimed invention.

Similarly, Evins has an insole; that is, the portion upon which the foot rests, connected to and positioned upon a combination heel and sole, as shown in FIGS. 2-3 of Evins. However, in Evins, there is no space between the rear portions of the insole and the sole, and the heel does not substantially fill any such space, as in the claimed invention.

Similarly, Wallach has an insole 12 connected to and positioned upon a heel 11 and a sole 10, as shown in FIGS. 2 and 5 of Wallach. However, in Wallach, there is no space between the rear portions of the insole 12 and the sole 10, and the heel 11 does not substantially fill any such space, as in the claimed invention.

Similarly, Wasserman has a sole S, but there is no disclosure or suggestion of a separate or distinct heel or insole, and so there is no disclosure or suggestion in Wasserman of a space between rear portions of an insole and the sole S which a heel substantially fills, as in the claimed invention.

Santisi does not cure the deficiencies of the remaining cited art, since Santisi has a heel 14 beneath the sole, being the underside of the one-piece body forming a sandal 10, as in FIGS. 1 and 3-4 of Santisi. Accordingly, Santisi does not have a heel positioned between rear portions of an insole and a sole or outer sole, as in the claimed invention.

In addition, the transparent sheet 25 composed of plastic or other suitable material (Santisi, column 2, lines 40-44) does not constitute a heel, since the transparent sheet 25 is hollow and merely retains therein an ornament such as a decorative bouquet 24 of artificial flowers (Santisi, column 2, lines 37-40). Therefore, Santisi does not have a heel disposed between rear portions of an insole and a sole, as in the claimed invention.

In fact, Santisi refers to the upper and lower rear portions of the sandal 10 as being “upper heel portion 13” and “lower heel portion 12” throughout the disclosure of Santisi (Santisi, column 1, line 62 et seq.).

Even if one considered the transparent sheet 25 of Santisi as being a heel disposed between rear portions of an insole and a sole, the transparent sheet 25 is not substantially solid,

as is the heel in the claimed invention, since the transparent sheet 25 wraps around to form an internal recess in which the decorative bouquet 24 is disposed.

Furthermore, the transparent sheet 25 does not completely extend to the junction between the upper heel portion 13 of the sandal 10 and the lower heel portion 12 of the sandal 10, as shown in FIG. 3 of Santisi, since the transparent sheet 25 ends at a point 23 near to, but not identical to, the juncture of the upper and lower heel portions (Santisi, column 2, lines 32-35).

In addition, since the transparent sheet 25 is hollow when formed about the recess between the upper heel portion 13 and the lower heel portion 12, the transparent sheet 25 cannot be a heel which substantially fills such a recess between rear portions of an insole and a sole, as in the claimed invention.

Therefore, Santisi does not disclose or suggest the claimed invention in amended claims 1, 9, and 17.

The Official Notice of hook-and-loop fasteners taken by the examiner also does not cure the deficiencies of the cited art to provide a space between the rear portions of the insole and the sole, and a heel which substantially fills any such space, as in the claimed invention.

One having ordinary skill in the art would not look to the cited art for the elements, steps, and features of amended claims 1, 9, and 17, since none of the items of cited art provide the combination of an elevated heel and a solid heel filling the entire space between rear portions of the insole and the sole, as in the claimed invention.

By providing an elevated heel, the claimed invention offers fashionable footwear, while simultaneously providing a substantially solid heel to promote arch support and durability, and so the footwear of the claimed invention may be worn during recreational, leisure, or lengthy activities.

In contrast, Wasserman is an athletic shoe and Buchsenschuss has a low heel, and so each patent lacks a fashionable high heel. On the other hand, Wallach, Lin, and Evins disclose fashionable high heel shoes with relatively thin heels limited to the rear of the shoe and not extending forward towards the front portion of the sole, and so such shoes of Wallach, Lin, and Evins lack a sufficiently large and solid heel and so cannot promote arch support and durability when worn during recreational, leisure, or lengthy activities, as in the claimed invention. Accordingly, one skilled in the art would not look to the cited patents for the combination of fashion and function of the claimed invention.

Furthermore, Santisi is a faux high heel, having a relatively small heel 14 and relying on transparent plastic in a sheet 25, with a recess therein for decorations 24, to maintain the spacing between the upper heel portion 13 and the lower heel portion 12. One skilled in the art would not look to Santisi for a substantially solid heel as in the claimed invention which promotes arch support and durability when worn during recreational, leisure, or lengthy activities. In fact, one skilled in the art would expect such securing means as the nails 26 in Santisi to eventually wear and/or tear apart the transparent sheet 25 by material fatigue from repeated steps and activities of the wearer, reducing the lifetime of the sandal 10 drastically, and so having limited use, especially if worn during recreational, leisure, or lengthy activities.

On the contrary, the substantially solid high heel of the footwear of the claimed invention is both fashionable and durable.

Accordingly, independent claims 1, 9, and 17 are patentable over the cited art, so reconsideration and withdrawal of the rejections of claims 1, 9, and 17 are respectfully requested.

Claims 2-8, 10-16, and 18-22 depend from independent claims 1, 9, and 17, respectively, and so includes the recitation of amended claims 1, 9, and 17, respectively. Therefore, for the reasons set forth above, claims 2-8, 10-16, and 18-22 are also patentable over the cited art.

Therefore, claims 1-22 are patentable over the cited art, so reconsideration and withdrawal of the rejection of claims 1-22 are respectfully requested.

Accordingly, entry and approval of the present amendment and allowance of all pending claims are respectfully requested.

In case of any deficiencies in fees by the filing of the present amendment, the Commissioner is hereby authorized to charge such deficiencies in fees to Deposit Account Number 01-0035.

Respectfully submitted,



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